

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Arsape S.A.,

NO. C 03-4535 JW

Plaintiff,

**ORDER DENYING ARSAPE'S
MOTION TO STRIKE JDSU'S
JUNE 15, 2005 OBJECTIONS TO
EVIDENCE**

v.

JDS Uniphase Corporation,

Defendant.

On May 16, 2005, Plaintiff Arsape S.A. ("Arsape"), Defendant JDS Uniphase Corp. ("JDSU"), and Donovan Micro-Tek Inc. ("DMT"), a third-party in this suit, filed cross-motions for summary judgment. (JDSU's Opposition, Docket Item No. 104, at 2:9; Arsape's Motion, Docket Item No. 103, at 2:5-6.) A hearing on the motions is scheduled for August 22, 2005. On June 6, 2005, Arsape and DMT filed their reply, along with additional supporting declarations and documents (hereinafter, "the June 6 evidence"), which comprise the evidence at issue in this motion. (JDSU's Opposition at 2:15; Arsape's Motion at 2:8-9.) On June 15, 2005, JDSU filed its objections to the June 6 evidence. (JDSU's Opposition at 2:17-19; Arsape's Motion at 2:10-12.) Subsequently, Arsape filed this Motion to Strike JDSU's June 15, 2005 Objections to Evidence (hereinafter, "Motion to Strike"). A hearing on the Motion to Strike was scheduled for August 1, 2005. However, the Court deems it appropriate to take this motion under submission for decision on the papers.

Civil L.R. 7-3(d) states that "once a reply is filed, no additional memoranda, papers or letters may be filed without prior Court approval," except for new judicial opinions. However, the "local rules supplement the applicable Federal Rules. They shall be construed so as to be consistent with the Federal Rules." Civil L.R. 1-2(b). Those Federal Rules require that, for summary judgment,

1 "[s]upporting and opposing affidavits shall . . . set forth such facts as would be admissible in
2 evidence." FED. R. CIV. P. 56(e). Since the Court will need to consider the admissibility of the June
3 6 evidence submitted in support of Arsape's motion for summary judgment, the Court declines to strike
4 JDSU's objections to the June 6 evidence.

5 The Court will permit Arsape to submit its own reply to JDSU's objections to the June 6
6 evidence. However, only arguments as to the admissibility of the June 6 evidence shall be raised. No
7 new legal arguments may be tendered. If Arsape elects to file a reply to JDSU's objections, it shall
8 file it on or before August 9, 2005.

9 For the foregoing reasons, the Court DENIES Arsape's Motion to Strike.

10 Dated: August 4, 2005

11 /s/James Ware
JAMES WARE
United States District Judge

12 03cv4535mts-obj-evid

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Gaylord A. Virden gavyls62@msn.com
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5 **Dated: August 4, 2005**

Richard W. Wicking, Clerk

6 **By: /s/JWchambers**

Ronald L. Davis
Courtroom Deputy